



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2018-0080; FRL-9977-24-Region 9]**

#### **Revisions to California State Implementation Plan; Bay Area Air Quality Management District; Stationary Sources; New Source Review**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing action on revisions to the Bay Area Air Quality Management District (BAAQMD or District) portion of the California State Implementation Plan (SIP). These revisions concern permit program rules governing the issuance of permits for stationary sources, including review and permitting of major sources and major modifications under parts C and D of title I of the Clean Air Act (CAA), and the issuance and banking of Emission Reduction Credits. The revisions correct deficiencies in BAAQMD Regulation 2, Rules 1 and 2, and Regulation 2, Rule 4, previously identified by the EPA in final rules dated August 1, 2016, and December 4, 2017, respectively. Approval of this SIP revision terminates the sanctions clock and federal implementation plan (FIP) clock that were triggered by the EPA's limited disapproval of a related SIP submission on August 1, 2016.

**DATES:** This rule will be effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket No. EPA-R09-OAR-2018-0080. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential

Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “FOR FURTHER INFORMATION CONTACT” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Laura Yannayon, EPA Region 9, (415) 972-3534, [yannayon.laura@epa.gov](mailto:yannayon.laura@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

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## **I. Proposed Action**

On March 1, 2018 (83 FR 8822), the EPA proposed to fully approve the following rules that were submitted for incorporation into the BAAQMD portion of the California SIP.

**Table 1 - Submitted Rules**

Regulation & Rule No.	Rule Title	Amended	Submitted
Regulation 2, Rule 1 (Rule 2-1)	Permits, General Requirements	12/6/2017	12/14/17
Regulation 2, Rule 2 (Rule 2-2)	Permits, New Source Review	12/6/2017	12/14/17
Regulation 2, Rule 4 (Rule 2-4)	Permits, Emissions Banking	12/6/2017	12/14/17

We proposed approval of these rules because we determined that the rules met the statutory requirements for SIP revisions as specified in sections 110(l) and 193 of the CAA, as

well as the substantive statutory and regulatory requirements for a NSR permit program as contained in CAA section 110(a)(2)(C), and 40 CFR 51.160 - 51.166.

## **II. Public Comments and EPA Responses**

The EPA's proposed action provided a 30-day public comment period. During this period, we received 13 comments on the proposed rule. Twelve of these comments raised issues that are outside the scope of our proposed approval of the BAAQMD rules, including climate change science, air toxics regulation, rare earth mining, wind power costs and regulations, and pipeline and export terminal construction. Although some commenters made general statements about the sufficiency of current air quality in the United States and the cost of additional regulation, these comments did not address the regulations at issue in the present rulemaking, nor did they indicate that the submitted rules do not meet the requirements of the Act. One commenter stated that "adopting best available retrofit control technology (BARCT) is absolutely imperative if the air quality crisis is to be mitigated." BARCT is a state law requirement, not a requirement of the Clean Air Act. Therefore, consideration of BARCT is outside the scope of the present rulemaking.

The BAAQMD submitted a comment stating that it "supports EPA's proposed approval of the Air District's New Source Review rule revisions," but noting that it disagrees with the EPA's characterization of portions of the District's prior submission of earlier versions of Regulation 2, Rules 1 and 2 as "deficiencies." The District's previously submitted version of these rules is not presently before the EPA; therefore the comment is not germane to the present rulemaking. With respect to the rule that is presently before the Agency, the District states that it

supports the proposed approval, and does not indicate that the submission does not meet all applicable requirements of the Act.<sup>1</sup>

During the comment period the EPA also received four comments on the interim final determination to defer sanctions (83 FR 8750) that accompanied the proposed rule. These comments raised issues that were not germane to the interim final determination.

The EPA is required to approve a state SIP submission if the submittal meets all of the applicable requirements of the Act. 42 U.S.C. 7410(k)(3). None of the submitted comments indicate that the District's submittal of Regulation 2, Rules 1, 2, and 4 does not meet the requirements of the Act.

### **III. EPA Action**

No comments were submitted that change our assessment that submitted Regulation 2, Rules 1, 2 and 4 satisfy the applicable CAA requirements. Therefore, under CAA sections 110(k)(3) and 301(a), and for the reasons set forth in our March 1, 2018 proposed rule, we are fully approving Regulation 2, Rules 1, 2 and 4. This action incorporates the submitted rules into the BAAQMD portion of the California SIP and makes them federally enforceable. In addition, because we are finalizing our proposed action, we are removing existing Regulation 2, Rules 1, 2 and 4 from the BAAQMD portion of the California SIP.

Upon the effective date of today's final approval, all sanctions clocks and FIP clocks that were triggered upon our final limited disapproval at 81 FR 50339 (August 1, 2016) of previous

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<sup>1</sup> In its comment, the District stated that it incorporates by reference certain prior comments submitted by the District regarding the EPA's November 12, 2016 proposed action on the District's submission of a previous version of Regulation 2, Rules 1 and 2. These comments relate to a previous version of the rule, and the District does not suggest that they address deficiencies with the present rule, or issues germane to the present action. Moreover, the referenced comments were not properly presented to the Agency for consideration. As stated in our proposed rule, and the EPA's public comment guidance: "[t]he EPA will generally not consider comments or comment contents located outside of the primary submission." 83 FR 8822. For these reasons, the EPA does not herein specifically respond to issues raised in the District's previously submitted comment in a separate rulemaking docket.

versions of Regulation 2, Rules 1 and 2, and deferred upon our interim final rule at 83 FR 8750 (March 1, 2018), are permanently terminated. In addition, by submitting an updated version of Regulation 2, Rule 4, addressing the deficiencies identified in our conditional approval at 82 FR 57133 (December 4, 2017), the District has met the commitment that served as the basis for our conditional approval. Therefore, upon the effective date of today's final approval of Regulation 2, Rule 4, amended December 6, 2017, the EPA is removing from the SIP the conditional approval of Regulation 2, Rule 4, amended December 19, 2012.

#### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the rules listed in Table 1 of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at the U.S. Environmental Protection Agency, Region IX (Air-3), 75 Hawthorne Street, San Francisco, CA, 94105-3901.

#### **V. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, New source review, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: April 18, 2018.

Alexis Strauss,  
Acting Regional Administrator,  
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 -- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

**Subpart F – California**

2. Section 52.220 is amended by adding paragraphs (c)(429)(i)(E)(4) and (c)(502) to read as follows:

**§52.220 Identification of plan – in part.**

\* \* \* \* \*

(c) \* \* \*

(429) \* \* \*

(i) \* \* \*

(E) \* \* \*

(4) Previously approved on August 1, 2016 in paragraphs (c)(429)(i)(E)(1) and (2), and on December 4, 2017 in paragraph (c)(429)(i)(E)(3) of this section and now deleted with replacement in paragraph (c)(502)(i)(A)(1) of this section, Regulation 2, Rules 1, 2, and 4.

\* \* \* \* \*

(502) Amended regulations for the following APCD were submitted on December 14, 2017 by the Governor's Designee.

(i) *Incorporation by reference.* (A) Bay Area Air Quality Management District.

(1) Regulation 2, "Permits," Rule 1, "General Requirements," adopted on December 6, 2017; Regulation 2, "Permits," Rule 2, "New Source Review," adopted on December 6, 2017; and Regulation 2, "Permits," Rule 4, "Emissions Banking," adopted on December 6, 2017.



**§52.248 [Amended]**

3. Section 52.248 is amended by removing and reserving paragraph (c).

[FR Doc. 2018-10691 Filed: 5/18/2018 8:45 am; Publication Date: 5/21/2018]